UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,431	01/22/2001	William M. Johns	111788.00101	9036

27557	7590	07/14/2005

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EXAMINER
ZHONG, CHAD

ART UNIT	PAPER NUMBER
2152	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/765,431	JOHNS ET AL.
	Examiner	Art Unit	
	Chad Zhong	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **3** MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 March 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

FINAL ACTION

1.   This action is responsive to communications: Amendment, filed on 03/17/2005. This action has

been made final.

2.   Claims 1-14 are presented for examination.

Claims 1, 4, 14 are amended.

3.   Applicant's remarks filed 03/17/2005 have been considered but are found not persuasive in

view at the new grounds at rejection necessitated by Applicant's amendment.

Claim Rejections - 35 USC § 112, second paragraph

Claims 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly

point out and distinctly claim the subject matter which applicant regards as the invention.

       a.   The following terms lack antecedent basis:

           i.   said at least one performance monitor - claim 1, lines 3-4.

       b.   The claim language in the following claims is not clearly understood:

           i.   As per claim 1, line 7, it is not clearly understood what is meant by 'views'(i.e. are they displayed?)

           ii.   As per claim 1, line 10, it is not clearly understood what is meant by "pseudo message".

           iii.   As per claim 1, line 10, it is not clearly understood what is determined in 'determine network availability'.

           iv.   As per claim 1, line 13, it is not clearly understood what is meant by "availability problems".

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 1, 3-8, 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badt, Jr. (hereinafter Badt), US 2003/0133417, in view of Bush, US 6,754,664.

6.   As per claim 1, Badt teaches a method for monitoring performance and availability on a network, the method comprising:

(a) running at least one performance monitor process on the network (wherein the performance monitor is the local monitoring on each of the nodes as messages are passed between each of the nodes [0185], [0096], [0100-0103], performance monitor exist locally at each node, and capacity information is updated periodically through the explore and return messages), said at least one performance monitor watching network activity to and from application server to entry servers and activity audit trail for the network ([0060-0061], [0100-0102], audit trail performs the topology monitoring of neighbors);

(b) running a network monitor manager process ([0171]; [0178], wherein OSS 326 is the monitor manager process) on the network, for consolidating information from log into views ([0178]; [0008], wherein database is generated and populated for users to view available capacity in the network);

(c) establishing a connection from the network monitor manager process to said at least one performance monitor process to control said at least one performance monitor to send a pseudo message to an entry server to determine network availability; ([0007]; [0096]; [0100-0102]; [0171]; [0178]; wherein local monitoring done by each nodes such as ID, IP, port information are sent to the OSS central monitoring process for keeping accurate up-to-date mapping of the topology of the network, messages are traversed through out the network and availability information are sent back to

OSS 326 and kept track therein; the pseudo message comprises explore message, response message, alarm message), and

(d) receiving the pseudo message from said at least one performance monitor process and determining a response for the pseudo message for each segment of the network traversed by the pseudo message to determine where availability problems exist within the network connection for the entry server ([0185], wherein upon the failure in the network, appropriate response in the form of re-route occurs in accordance with the mapping information gathered previously to navigate packets away from the failed location).

Badt does not explicitly teach:

creating a transaction response time log by the performance monitor.

In a similar system, Bush teaches a performance monitoring system have a response time log for record keeping purposes (Col. 13, lines 30-40).

It would have been obvious to the person ordinary skill in the art at the time of the invention to combine teachings of Badt and Bush because track of response time as used by Bush would lead to transaction response time log by the performance monitor of Badt, and would result in enhancing the history and record keeping in Badt's system.

7.   As per claim 3, Badt teaches the method of claim 1, further comprising:

(i) running a client-server monitoring process on a server dedicated to the client server monitoring process ([0178]);

(j) receiving, in the client-server monitoring process, information about transactions executed by production applications on the network ([0155]; [0159]; [0171]; [0178]); and

(k) determining performance and availability of the production applications in accordance with the information received in step (j) ([0113]; [0155]; [0159]; [0161]; [0178]).

8.   As per claim 4, Badt teaches the method of claim 3, wherein step (j) comprises running a filtering agent on each or on behalf of each of the production applications to convert the information from application logs into a form usable by the client-server monitoring process ([0086-0088], features a signal conversion aspect of Badt to convert signals into network monitor compatible format).

9.   As per claim 5, Badt teaches the method of claim 4, wherein:

the network comprises a mainframe having at least one logical partition which generates an application log ([0178]); and

the method further comprises (1) monitoring the application log through a mainframe monitoring process ([0178]; [0174]).

10.   As per claim 6, Badt teaches the method of claim 5, wherein:

the application log comprises transaction entries having end-user addresses ([0178]); and

step (1) comprises categorizing the transaction entries by the end-user addresses ([0174]; [0178]).

11.   As per claim 7, Badt teaches the method of claim 6, further comprising (m) generating a performance report for the network through an administrative process and making the report available over a data network ([0178], wherein over available capacity of the network is generated).

12.   As per claim 8, Badt teaches the method of claim 7, wherein the data network comprises the Internet ([0148]).

13.   As per claim 12, Badt teaches:

the method of claim 4, wherein each said filtering agent detects processes running on the network and cross-references the detected processes to known processes, and further comprising forming an event correlation engine in accordance with the detected processes ([0086-0088]; [0174]).

14.   As per claim 13, Badt teaches:

the method of claim 12, wherein each said filtering agent detects changes to the processes running on

the network, and further comprising maintaining the event correlation engine in accordance with the

detected changes to the processes ([0086-0088]; [0174]; [0178]).

Claim Rejections - 35 USC § 103

15.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such
> that the subject matter as a whole would have been obvious at the time the invention was made to a person having
> ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in
> which the invention was made.

16.   Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Badt, Jr. (hereinafter

Badt), US 2003/0133417, in view of Hemphill et al. (hereinafter Hemphill), US 5,696,895.

17.   As per claim 2, Badt does not explicitly teaches the method of claim 1, further comprising:

(e) running at least one availability monitor process on the network;

(f) from the response determined in step (d), detecting at least one possibly failed

component of the network;

(g) sending a message from the at least one availability monitor process to the at least

one possibly failed component; and

(h) determining, in accordance with a result of the message, whether the at least one

possibly failed component has failed.

In a similar system, Hemphill teaches of plurality of systems exchanging heartbeat messages, the recovery

agents are doing monitoring of network statuses through these heartbeat messages. In event of a potential

failure the recovery agent will no longer receive heartbeat messages, a confirmation message is sent out to

the device being monitored to verify its status, and if there is no response, the device being monitored is

determined to have failed.

It would have been obvious to the person ordinary skill in the art at the time of the invention to combine

Badt and Hemphill because network monitoring as used by Hemphill would lead to monitoring of

potential failures and verify if they are actually errors of Badt, and would result in enhancing the error

detection capabilities in the network as there is an extra verification step to make sure there is indeed an

error.

18.   Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badt, Jr. (hereinafter

Badt), US 2003/0133417, in view of Dattatri, US 2002/0049815.

19.   As per claim 9, Badt does not explicitly teach the method of claim 8, further comprising:

        (n) receiving, in the client-server monitoring process, information about transactions executed by e-

commerce applications on the network; and

        (o) determining performance and availability of the e-commerce applications in accordance with the

information received in step (n) through an e-commerce monitoring process.

Dattatri teaches a network monitoring system operating under e-commerce environment keeping track of

network transactions, specifically, Dattatri teaches a system for commercial communications in which

communication between trading partners is tracked so that information goes to a desired trading partner in

a timely manner and in which receipt can be verified.

Dattari teaches:

        (n) receiving, in the client-server monitoring process, information about transactions executed by e-

commerce applications on the network ([0111]; [0110]); and

        (o) determining performance and availability of the e-commerce applications in accordance with the

information received in step (n) through an e-commerce monitoring process ([0110]; [0115]; [0078]).

It would have been obvious to combine teachings of Badt and Dattatri in order to monitor transactional processes in an e-commerce environment ([0008]; [0017]).

20.   As per claim 10, Badt does not explicitly teach the method of claim 9, wherein at least one of the e-commerce applications makes at least one Web page accessible to customers, and wherein step (n) comprises placing code in the at least one Web page, the code sending time stamps to the client-server monitoring process when the code is accessed

Dattatri teaches a network monitoring system operating under e-commerce environment keeping track of network transactions, specifically, Dattatri teaches a system for commercial communications in which communication between trading partners is tracked so that information goes to a desired trading partner in a timely manner and in which receipt can be verified.

Dattatri teaches:

the method of claim 9, wherein at least one of the e-commerce applications makes at least one Web page accessible to customers, and wherein step (n) comprises placing code in the at least one Web page, the code sending time stamps to the client-server monitoring process when the code is accessed ([0069]; [0088]).

It would have been obvious to combine teachings of Badt and Dattatri in order to monitor transactional processes in an e-commerce environment ([0008]; [0017]).

21.   As per claim 11, Badt teaches the method of claim 10, further comprising providing a central data repository, and wherein the network monitor manager process, the client-server monitoring process, the mainframe monitoring process, the administrative process, ([0178])

Badt does not explicitly teach:

the e-commerce monitoring process communicate with one another through the central data repository

Dattatri teaches a network monitoring system operating under e-commerce environment keeping track of network transactions, specifically, Dattatri teaches a system for commercial communications in which communication between trading partners is tracked so that information goes to a desired trading partner in a timely manner and in which receipt can be verified.

Dattatri teaches:

the e-commerce monitoring process communicate with one another through the central data repository (Fig 1, 2, wherein system is communicating through the repository for message back ups).

It would have been obvious to combine teachings of Badt and Dattatri in order to monitor transactional processes in an e-commerce environment ([0008]; [0017]).

22.   Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Badt, Jr. (hereinafter Badt), US 2003/0133417, in view of Lin et al. (hereinafter Lin), US 6,405,250.

23.   As per claim 14, Badt teaches:

the method of claim 13, further comprising, when it is determined in step (k) that the performance or the availability of one of the production applications is impaired, determine its corresponding effect on an SLA in accordance with the event correlation engine ([0129]).

Badt does not explicitly teach:

when it is determined in step (k) that the performance or the availability of one of the production applications is impaired, determining and reporting a cause of impairment

In a similar system, Lin teaches a network monitoring system based on a series of agents reporting to central server, specifically, Lin teaches further monitoring the cause of failure (Col. 9, lines 35-55).

It would have been obvious to combine teachings of Badt and Lin in order to determine reasons for failure during a catastrophic event see for example, Col. 9, lines 35-55; Col. 2, lines 12-25.

Conclusion

24.　　**THIS ACTION IS MADE FINAL**. Applicant is reined of the extension of time policy as set

forth in 37 CFR 1.136(a).

　　　A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

1.136(a) will be calculated from the mailing date of the advisory action. In no event, however

will the statutory period for reply expire later than SIX MONTHS from the mailing date of this

final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The

following patents and publications are cited to further show the state of the art with respect to "SYSTEM

AND METHOD FOR CONTINUOUS MONITORING AND MEASUREMENT OF PERFORMANCE

OF COMPUTERS ON NETWORK".

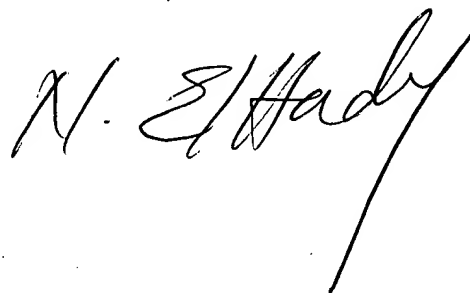|		
i.	US 2002/0133584	Greuel et al.
ii.	US 5964837	Chao et al. ·
iii.	US 2002/0055967	Coussement
iv.	US 5764626	VanDervort.

Any inquiry concerning this communication or earlier communications from the examiner should

be directed to Chad Zhong whose telephone number is (571)272-3946. The examiner can normally be

reached on M-F 7:15 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

BURGESS, GLENTON B can be reached on (571)272-3949. The fax phone number for the organization

where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained

from either Private PAIR or Public PAIR. Status information for unpublished applications is available

through Private PAIR only. For more information about the PAIR system, see http://pair-

direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

CZ
June 12, 2005